

31 May 2016

Commercial-in-Confidence

Ms Carolyn McNally
Secretary
NSW Department of Planning and Environment
PO Box 39
Sydney NSW 2001

Attention: Natasha Harras – Team Leader, Modification Assessments
Brett Whitworth – Department of Planning & Planning

Dear Carolyn,

Further response - Section 96(2) Modification Application - Sydney International Regatta Centre

Thank you for the opportunity for PLDC and AECOM to review Office of Sports' letter of response to submissions regarding modification to DA 85-4-2004 (MOD 3) and dated 5 May 2016.

On review of the Office of Sports' letter, AECOM has prepared this following letter on behalf of Penrith Lakes Development Corporation (PLDC) which should be read in conjunction with and further substantiates the points raised in our letter to the Department dated 25 February 2016.

The following provides clarifications and further response to matters outlined in Office of Sports' letter.

1.0 Permanency of SIRC Operations

Although PLDC acknowledges that the SIRC operations have been a suitable use for this part of the Penrith Lakes site for some time, the operations are not considered appropriate as permanent until the uses and operations on the SIRC site have been considered in conjunction with the long term plans for the site - which are to still to be incorporated into the planning scheme through a rezoning under the Penrith Lakes SEPP. The NSW Government's commitment to rezone the Penrith Lakes site for future urban purposes is still pending, so therefore the SIRC operations long term should also continue to be pending and not finalised until the future urban purposes on the Penrith Lakes site are known.

The Draft Penrith Lakes Parklands Vision Plan for the site as mentioned in Office of Sport's letter is just that – a draft plan that has not been endorsed and pre-empts the rezoning of the Penrith Lakes site. Moreover, it should be noted that this draft Vision Plan is not a statutory matter for consideration under section 79C of the *Environmental Planning and Assessment Act 1979*, so it can't be fully relied upon to then assist guiding the suitably in making the SIRC operations permanent on the Penrith Lakes site as sought as part of the subject modification application.

Interestingly we continue to note that the SEE submitted with the modification application did not actually assess the proposed amendments against the Draft Vision Plan, despite the Office of Sports claim in their letter that the proposal is consistent with the draft plan.

It is acknowledged that recreational uses are permitted on the site under Clause 11 of the Penrith Lakes SEPP. However, this use is not to jeopardise the implementation of the Penrith Lakes Scheme. This requirement is enshrined in sub clause of the same provision (Clause 11(2)) of the SEPP which states:

"2) The consent authority shall, in determining an application to carry out development for the purposes of recreation, take into consideration the implementation of the Penrith Lakes Scheme and the structure plan"

This same requirement is again repeated in Clause 9 of the SEPP which states that

Development may be carried out on any part of the land to which this Policy applies:

(a) for the purpose of agriculture, without the necessity for development consent, or

(b) for any other purpose, with development consent, if the consent authority is satisfied that the carrying out of development for that purpose will not adversely affect the implementation of the Penrith Lakes Scheme.

pending the completion of the Penrith Lakes Scheme in, and the use as a public recreational lake system of, that part of the land."

The Office of Sports' comment that "*The mainstream recreational use of the SIRC cannot be fettered by the new and potential residential estates*", suggests a lack of understanding that the future urban land use of the site in the context of these overarching clauses of the Penrith Lakes SEPP and the intent for site for urban purposes needs to be considered before the longer term recreational uses can be finalised.

Therefore, to reiterate our previous point in our submission letter dated 25 February 2016, making the SIRC operations permanent is premature and undermines the ability to test and determine the development potential for the Penrith Lakes site as agreed to under the Deed of Agreement and as sought by the Penrith Lakes SEPP.

This does not prevent the continued operation of the SIRC operations by further temporarily extending the timeframe to permit this to operate. However, it is our view that by making SIRC a permanent land use prior to the rezoning of the Penrith Lakes site for urban purposes (as formally agreed between PLDC and the NSW Government) undermines this future intent, which is sought to be safeguarded by the current provisions of the Penrith Lakes SEPP.

2.0 Commitments to IOC to seek and enduring consent

The current consent was temporary from the beginning and despite numerous modification requests for SIRC operations to become a permanent operation remains a temporary land use of the Penrith Lakes site. Making this operation permanent undermines the NSW Government's binding commitments to PLDC to rezone the land for urban purposes first.

3.0 Inadequate Assessment of Permanent Arrangements

Office of Sports has indicated that the assessment provided with the application was adequate for the modification. In our opinion it failed to consider or even acknowledge that the social, environmental and economic impacts of this are enduring and that more appropriate permanent management and mitigation arrangements should then be put in place to justify this approach. Specifically this includes permanent plans of management and the like, that would be ordinarily anticipated for this type of large scale recreational use.

Although the SIRC operations have been operating for a reasonable period of time, this has been done as an interim use of the land until such time the Penrith Lakes site is rezoned for urban purposes is appropriate. The rezoning of the Penrith Lakes site needs to determine the most appropriate urban design and land use approach for the whole of site (including the SIRC land) and to incorporate this into the final land use arrangements for the entire site. Permitting the SIRC's operations as permanent would fetter this whole of site assessment and urban design response approach. This is not to say that the SIRC may not have a place in the continued and future use of the site, but continued operation for SIRC should not dictate the urban land configuration before this has been considered in detail and in conjunction with the future intention to rezone the site for urban purposes.

4.0 Recreation Uses are Open for Interpretation

The current SIRC consent is not prescriptive as to the range of recreational uses that will continue to feature as part of its operations. The reason that the recreational uses were not otherwise constrained under the current consent is that the consent was time limited. This loose approach for permanent operations doesn't enable full consideration or assessment of the broader and longer term impacts of what uses that may occur on the site, particularly those uses that have not previously been carried out on the site that may be classified or characterised as recreational uses.

The fundamental premise of affording development consent is to permit for certain uses and development with a full comprehension of what impacts these uses and development will have on the site and its surrounds. Therefore, how can these impacts of unknown future and permanent operations be quantified and then assessed to determine whether these are suitable for the site and that the development is suitable for the site, and that these are in the public interest?

Therefore, it is open to broad interpretation as to what are the recreational uses permitted on the SIRC land, which in turn makes it difficult to then determine and ascertain whether these uses are then compatible with the future intended urban land uses for the Penrith Lakes site. Moreover, it is unclear as to how then the consent conditions would need to be modified to regulate permanent operations as this wasn't addressed in the SEE or the Office of Sports' letter.

5.0 Section 96(2) or Section 96(1A)

The correspondence from Office of Sport is titled 'Section 96(2)'. Therefore, has the modification now been adjusted from Section 96(1A) to Section 96(2) and if so has a revised SEE been submitted to address this subsection of the EP&A Act and to properly reconsider the impacts in terms of whether the proposed modification was substantially the same development.

6.0 Land Owners Consent

The letter from the Office of Sport does not include any evidence that the Office of Sport has obtained land owners consent. It appears from a review of the Department's website that a letter dated 1 October 2014 from the Office of Penrith Lakes to the SIRC is relied upon as the giving of land owner's consent. The Office of Penrith Lakes is not the owner of the SIRC site. Furthermore, even if it was the owner of the land, the letter does not comply with the requirements in clause 115(1). If land owners consent has not otherwise been obtained then any modified consent issued is likely to be in breach of 115(1) of EP&A Regulation.

If you have any questions or clarifications regarding this letter please don't hesitate to contact me or Dani Robinson (PLDC).

Yours faithfully



Amanda Harvey
Associate Director – Planning
Amanda.Harvey@aecom.com

Ph 8934 0332